IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1391/2007
(Brij Lal Vs. State of Rajasthan)

Date of Order : 17/09/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Trilok Joshi for the petitioner.

Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyay, public prosecutor accepts the notice on behalf of respondent State. With the consent of learned counsel for the parties, the criminal misc. petition itself is heard and decided at the admission stage.

By the instant petition under section 482 Cr.P.C. the petitioner has challenged order dated 16.08.2007 passed by learned Additional Chief Judicial Magistrate, Raisinghnagar (for short 'the trial court' hereinafter) whereby while allowing the application filed by the petitioner, the trial court ordered to release the tractor with trolley bearing No. RJ-13/2R/1446 in favour of the petitioner provided the petitioner furnishes a

Supardginama of Rs. 35,000/- and a bank guarantee for the like amount on certain conditions incorporated in the order. Aggrieved by the impugned order directing the petitioner to furnish the bank guarantee, the petitioner has filed the instant petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the petitioner is the registered owner of the tractor in question which alleged to have been found carrying green wood in contravention of the provisions of the Forest Act and the petitioner is not an accused in the case. Learned counsel further submits that the petitioner is not in a position to furnish such a huge bank guarantee and the said tractor-trolley is the only source of the livelihood of the petitioner and therefore, in the facts and circumstances of the case, the condition imposed by the trial court to furnish bank guarantee of Rs. 35,000/- is onerous and the vehicle in question may be released in favour of the petitioner on Supurdginama.

This Court in Jeet Singh Vs. State of Rajasthan 2006 (2) R.Cr.D. 274 (Raj.) without going into the question as to whether the goods being transported in the vehicle, in fact, is a forest produce or not as defined in the Rajasthan Forest Act, held that the condition of furnishing bank guarantee is onerous and accordingly the condition of bank guarantee has been set aside

and vehicle has been ordered to be released on Supardginama.

Having regard to the facts and circumstances of the case, it is yet to be established in the trial as to whether the wood carried in the vehicle or transported, are forest produce or not, in my view, directing the petitioner to give the bank guarantee of Rs. 35,000/- appears to be a condition onerous and therefore, the ends of justice would be met if the vehicle in question is released in favour of petitioner on supurdginama.

In the result, the order impugned dated 16.08.2007 passed by the trial court is modified to the extent that instead of giving bank guarantee of Rs. 35,000/-, the tractor and trolley in question shall be released in favour of the petitioner on Supurdinama on his furnishing a personal bond in the sum of Rs. 1,00,000/- along with one surety in the like amount to the satisfaction of the trial court with the stipulation therein that during the pendency of the criminal case, neither alienate nor transfer the said tractor and trolley and keep it in good condition and he will produce the vehicle in question as and when directed by the trial court.

With the above modification, the petition is disposed of.

(H.R.PANWAR),J.

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